

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

F I L E D
JAN - 9 2006
CLERK'S OFFICE
DETROIT

FRANKLIN D. CLAYTON,

Petitioner,

v.

CASE NO. 05-CV-71943-DT
HONORABLE ARTHUR J. TARNOW

KENNETH MCKEE,

Respondent.

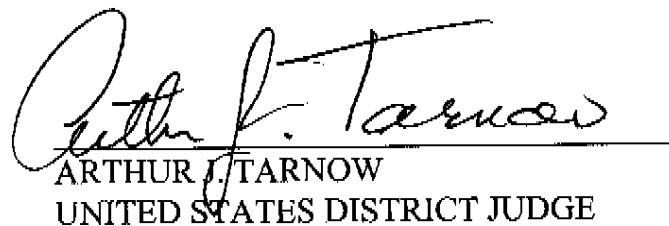
**ORDER DENYING A CERTIFICATE OF APPEALABILITY
AND DENYING LEAVE TO APPEAL IN FORMA PAUPERIS**

Petitioner Franklin D. Clayton has appealed the Court's order denying his motions for emergency substantive relief, for release from custody and from administrative segregation, for appointment of counsel, and for a copy of his habeas petition. The order also directed Petitioner to file a short, plain, and legible list of his habeas claims and to submit future documents double-spaced and typewritten or legibly handwritten.

The Court must treat Petitioner's notice of appeal as an application for a certificate of appealability. *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). In a habeas corpus proceeding, only "the *final order* shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held." 28 U.S.C. § 2253(a) (emphasis added). Because the order being appealed is not the final order in this case, it is not appealable. *See id*; *see also* Fed. R. App. P. 22(a) (stating that "[t]he applicant may,

Clayton v. McKee, No. 05-71943

under 28 U.S.C. § 2253, appeal to the court of appeals from the district court's *order denying the application*" for a writ of habeas corpus) (emphasis added). The Court therefore declines to issue a certificate of appealability. The Court also declines to grant leave to appeal *in forma pauperis*.



ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

JAN 09 2006

Date: _____